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KERAJAAN NEGERI KELANTAN

v.

PETROLIAM NASIONAL BHD & ANOR

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COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
ABU SAMAH NORDIN JCA
ALIZATUL KHAIR OSMAN JCA
[CIVIL APPEAL NO: W-01(IM)(NCvC)-229-11]

C

7 JUNE 2011

CIVIL PROCEDURE: *Action - Transfer - From Commercial Division to Civil Division - Appeal against - Whether Item 12 in the Schedule to the Courts of Judicature Act 1964 applicable - Whether Practice Direction*

D

properly and legally issued - Whether plaintiff's action should have been properly filed in the Civil Division - Whether plaintiff's application to re-transfer dismissed

E

This was an appeal by the Kelantan State Government ('the plaintiff') challenging the decision of the High Court in dismissing the plaintiff's application which sought an order to re-transfer the plaintiff's action from the Civil Division of the Kuala Lumpur High Court to the Commercial Division of the same court ('the re-transfer application'). The facts were that during case management

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before the registrar, the plaintiff and Petronas ('the defendant') were notified that the managing judge had, pursuant to Practice Direction No. 1 of 2008 ('the PD'), transferred the action from the Commercial Division to the Civil Division of the same court. Subsequently, the plaintiff filed the re-transfer application, which

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was dismissed by the learned judge of the Civil Division. The question that arose in this appeal was upon a true construction of item 12 in the Schedule to the Courts of Judicature Act 1964 ("Item 12") and in view of Practice Direction No. 1 of 2008, was the learned judge of the High Court correct in dismissing the plaintiff's re-transfer application.

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Held (dismissing the appeal)
Per Low Hop Bing JCA delivering the judgment of the court:

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(1) Item 12 is clear and unambiguous. The power conferred thereunder concerns the transfer of any proceedings to any other "court". Under s. 3 of the Courts of Judicature Act

1964, "Court" means the Federal Court, the Court of Appeal and the High Court as the case may require. With specific reference to the facts prevailing in the instant appeal, the power under Item 12 is intended to be exercised for the transfer of proceedings, *inter alia* (i) from the High Court in Malaya or in Sabah and Sarawak to either of them, to the Court of Appeal and the Federal Court and (ii) from one High Court to another High Court, as defined in s. 3. (para 13)

(2) Item 12 is inapplicable where, as in the instant appeal, there was no transfer of proceedings from one High Court to another High Court as defined in s. 3. If at all there was any "transfer" of proceedings, at most, it was a transfer of the plaintiff's action from one division *ie*, the commercial division to another division, the civil division. The movement of the plaintiff's action was effected by the managing judge pursuant to the PD, merely from the commercial division to the civil division, while the court remained unchanged *ie*, the High Court in Malaya at Kuala Lumpur. That being the case, the plaintiff's contention based on Item 12 could not be sustained. (para 14)

(3) The PD had been properly and legally issued. It came into force on 1 March 2008. It prescribed the categories of cases which were to be filed in the specific divisions of the High Court in Malaya at Kuala Lumpur. It provided specifically for the smooth administration of the specific divisions in dealing with the categories of cases filed therein. Parties herein were therefore bound by the PD. Further, the plaintiff's action in the High Court sought, *inter alia*, the remedy of specific performance of the contract executed between the plaintiff and Petronas, and clearly came within the purview of a civil action. The plaintiff's action should have been properly filed in the civil division. (paras 16 & 17)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan oleh Kerajaan Negeri Kelantan ('plaintif') mencabar keputusan Mahkamah Tinggi menolak permohonan plaintif yang ingin mendapatkan satu perintah untuk memindahkan semula tindakan plaintif dari Bahagian Sivil Mahkamah Tinggi Kuala Lumpur kepada Bahagian Dagang mahkamah yang sama

A ('permohonan memindahkan semula'). Fakta-fakta adalah bahawa semasa pengurusan kes sebelum pendaftar, plaintif dan Petronas ('defendan') telah diberitahu bahawa hakim pengurus telah, di bawah Arahan Amalan No. 1 2008 ('AA'), memindahkan tindakan dari Bahagian Dagang kepada Bahagian Sivil mahkamah yang
B sama. Seterusnya, plaintif memfailkan permohonan memindahkan semula, yang telah ditolak oleh yang arif hakim dari Bahagian Sivil. Persoalan yang timbul dalam rayuan ini adalah sama ada pada pentafsiran benar item 12 Jadual Kepada Akta Mahkamah Kehakiman 1964 ('item 12') dan mengambilkira Arahan Amalan
C No. 1 2008, adakah yang arif hakim Mahkamah Tinggi betul apabila menolak permohonan memindahkan semula plaintif.

Diputuskan (menolak rayuan)

Oleh Low Hop Bing HMR menyampaikan penghakiman
D **mahkamah:**

(1) Item 12 adalah nyata dan jelas. Kuasa yang ada di bawahnya berkenaan dengan pindahmilik prosiding-prosiding ke 'mahkamah' lain. Di bawah s. 3 Akta Mahkamah Kehakiman 1964, 'mahkamah' bermakna Mahkamah Persekutuan,
E Mahkamah Rayuan dan Mahkamah Tinggi mengikut kehendak kes. Dengan rujukan khusus kepada fakta-fakta lazim di dalam rayuan ini, kuasa di bawah item 12 ditujukan untuk perlaksanaan pindahmilik prosiding-prosiding, antara lain (i) dari
F Mahkamah Tinggi di Malaya atau di Sabah dan Sawarak atau untuk mana-mana antara mereka, kepada Mahkamah Rayuan dan Mahkamah Persekutuan dan (ii) dari Mahkamah Tinggi ke Mahkamah Tinggi yang lain, seperti ditakrifkan di dalam s. 3.

(2) Item 12 tidak digunapakai di mana, seperti di dalam rayuan ini,
G tidak terdapat prosiding-prosiding pindahmilik dari satu Mahkamah Tinggi kepada Mahkamah Tinggi yang lain seperti ditakrifkan di dalam s. 3. Jika terdapat apa-apa 'pindahmilik' prosiding-prosiding, paling kuat pun, ia adalah pindahmilik tindakan plaintif dari satu bahagian contohnya Bahagian
H Dagang kepada bahagian lain, Bahagian Sivil. Pergerakan tindakan plaintif dilakukan oleh hakim pengurus mengikut AA, hanya dari Bahagian Dagang kepada Bahagian Sivil, manakala mahkamah kekal tidak berubah iaitu Mahkamah Tinggi Malaya di Kuala Lumpur. Oleh kerana itu, hujahan plaintif berdasarkan
I item 12 tidak boleh dikekalkan.

(3) AA telah dikeluarkan secara betul dan sah. Ia dikuatkuasakan pada 1 Mac 2008. Ia menentukan kategori-kategori kes-kes yang perlu difailkan di dalam bahagian-bahagian spesifik Mahkamah Tinggi Kuala Lumpur. Ia menyediakan khususnya untuk pentadbiran lancar bahagian-bahagian tertentu dalam urusan kategori-kategori kes-kes yang difailkan. Pihak-pihak di sini terikat dengan AA. Seterusnya, tindakan plaintif di Mahkamah Tinggi meminta, antara lain, remedi pelaksanaan spesifik kontrak yang dilaksanakan antara plaintif dan Petronas, dan dengan jelasnya datang dalam skop tindakan sivil. Tindakan plaintif seharusnya difailkan di Bahagian Sivil.

Case(s) referred to:

Chua Choong Yin v. Tan Boon Bak Trading Sdn Bhd & Anor [2002] 3 CLJ 357 CA ***(refd)***

Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad [2010] 1 CLJ 444, 463 CA ***(refd)***

Jayasankaran v. PP [1983] 1 CLJ 171; [1983] CLJ (Rep) 182 FC ***(refd)***

Ling Siok Seng v. Ting Sieh Chung [1998] 4 CLJ 169 CA ***(refd)***

Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd [2002] 1 CLJ 645 FC ***(refd)***

Ooi Bee Tat v. Tan Ah Chim & Sons Sdn Bhd & Anor & Another Appeal [1995] 4 CLJ 484 SC ***(refd)***

Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor [1996] 2 CLJ 628 CA ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 3

Rules of the High Court 1980, O. 92 r. 3B

Other source(s) referred to:

Halsbury's Laws of England, 4th edn, vol 37, para 12

For the appellant - Tommy Thomas (Nur Ashikin Abdul Rahim with him); M/s Tommy Thomas

For the 1st respondent - Tan Sri Dato' Cecil Abraham (Rishwant Singh with him); M/s Zul Rafique & Partners

For the 2nd respondent - Datin Azizah Hj Nawawi SFC; AG's Chambers

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S-21 NCvC-21-2011]

Reported by Suhainah Wahiduddin

JUDGMENT

Low Hop Bing JCA:

Appeal

[1] This appeal by the Kelantan State Government ("the plaintiff") challenges the decision of the learned judge of the High Court in dismissing the plaintiff's application which sought an order to re-transfer the plaintiff's action from the Civil Division of the Kuala Lumpur High Court to the Commercial Division of the same court ("the re-transfer application").

Factual Background

[2] On 30 August 2010, a writ of summons together with the statement of claim was filed on behalf of the plaintiff in the Kuala Lumpur High Court. It was registered in the Commercial Division as Suit No. D-22NCC-1663-2010.

[3] The defendant, Petroliam Nasional Berhad ("Petronas"), then filed its defence. This was followed by the plaintiff's reply thereto. Thereafter, pleadings were closed.

[4] On 16 November 2010, the Government of Malaysia filed an application for leave to intervene and to be joined as second defendant in the High Court action ("the joinder application").

[5] The joinder application was fixed for hearing on 24 January 2011 before a judge in the New Commercial Court 5 (NCC5) of the commercial division.

[6] On 18 January 2011, during case management before the registrar, parties were notified that the managing judge had, pursuant to Practice Direction No. 1 of 2008 ("the PD"), transferred the action from the commercial division to the civil division of the same court. This was confirmed by a letter dated 19 January 2011 from the deputy registrar of the commercial division to the deputy registrar of the civil division. Consequently, the hearing date ie, 24 January 2011 for the joinder application was vacated.

[7] On 25 January 2011, the court notified the plaintiff's solicitors that the new number of the action is S-21NCvC-21-2011, and case management was fixed for 24 February 2011 at the New Civil Court 3 ("NCvC 3") of the civil division.

[8] Subsequently, the plaintiff filed the re-transfer application, which was dismissed by the learned judge of the civil division. Hence this appeal by the plaintiff.

Dismissal Of The Re-transfer Application

[9] Plaintiff's learned counsel Mr Tommy Thomas (assisted by Ms Nur Ashikin bt Abdul Rahim) relied on Item 12 in the Schedule to the Courts of Judicature Act 1964 to attribute an error to the learned judge of the High Court in dismissing the re-transfer application when:

(1) None of the parties in the High Court action had ever applied for its transfer from the commercial division to the civil division, and the transfer by the managing judge was not made judicially by way of normal hearing of arguments; and

(2) Although Petronas has not filed any affidavit in reply to the plaintiff's re-transfer application, the learned judge still proceeded to dismiss it.

[10] Learned counsel Tan Sri Dato' Cecil Abraham (Mr Rishwant Singh with him) took a neutral stand for Petronas.

[11] We identified the question for our decision as follows:

> Upon a true construction of Item 12 in the Schedule to the Courts of Judicature Act 1964 ("Item 12"), and in view of Practice Direction No. 1 of 2008 ("the PD"), was the learned judge of the High Court correct in dismissing the plaintiff's re-transfer application?

[12] Item 12 merits reproduction as follows:

> 12. Transfer of Proceedings
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> Power to transfer any proceedings to any other Court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof:
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> Provided that this power shall be exercised in such manner as may be prescribed by any rules of court.
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> (Emphasis added)

[13] We are of the view that Item 12 is clear and unambiguous. The power conferred thereunder concerns the transfer of any proceedings to any other "court". The meaning of the word "court" in the context of the first limb in Item 12 is of immense importance. It is contained in the definition section ie, s. 3 of the Courts of Judicature Act 1964. Under s. 3, "court" means the Federal Court, the Court of Appeal and "the High Court" as the case may require. "High Court" is defined, in s. 3 also, to mean the High Court in Malaya, and the High Court in Sabah and Sarawak or either of them, as the case may require. With specific reference to the facts prevailing in the instant appeal, the power under Item 12 is intended to be exercised for the transfer of proceedings *inter alia*:

(1) from the High Court in Malaya or in Sabah and Sarawak or either of them, to the Court of Appeal and the Federal Court; and

(2) from one High Court to another High Court, as defined in s. 3.

[14] It is abundantly clear to us that Item 12 is inapplicable where, eg, as in the instant appeal, there was no transfer of proceedings from one High Court to another High Court as defined in s. 3 above. If at all there was any "transfer" of proceedings, at most, it was a transfer of the plaintiff's action from one division ie, the commercial division to another division, the civil division. As a matter of fact, the movement of the plaintiff's action was effected by the managing judge pursuant to the PD, merely from the commercial division to the civil division, while the court remained unchanged ie, the High Court in Malaya at Kuala Lumpur. That being the case, the plaintiff's contention based on item 12 cannot be sustained.

[15] Order 92 r. 3B of the Rules of the High Court 1980, inserted pursuant to PU(A) 342/2000, empowers the chief judge to issue such practice directions as may be necessary for the better carrying out or giving effect to the provisions of the rules of court. While it is true that practice directions do not have the force of law as explained in para. 12 of vol. 37 Halsbury's Laws of England (4th edn), they are intended for administrative purposes: *Ooi Bee Tat v. Tan Ah Chim & Sons Sdn Bhd & Anor & Another Appeal* [1995] 4 CLJ 484 SC, following *Jayasankaran v. PP* [1983] 1 CLJ 171; [1983] CLJ (Rep) 182 FC per Raja Azlan Shah LP (now HRH the Sultan of Perak). Practice directions

provide guidelines for a more effective implementation of the rules of court. They seek to clarify or highlight such rules or modify them, but not to supersede or deviate from court rules which had been statutorily laid down. However, once practice directions have been properly and legally issued, they must be complied with: per Steve Shim CJ (S&S) (as he then was) in *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645; [2002] 1 MLJ 385 at 403 FC.

[16] In the instant appeal, it has not been disputed that the PD has been properly and legally issued. It came into force on 1 March 2008. It prescribes the categories of cases which are to be filed in the specific divisions of the High Court in Malaya at Kuala Lumpur. It provides specifically for the smooth administration of the specific divisions in dealing with the categories of cases filed therein. Parties herein are therefore bound by the PD. (See also *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor* [1996] 2 CLJ 628; *Ling Siok Seng v Ting Sieh Chung* [1998] 4 CLJ 169; *Chua Choong Yin v. Tan Boon Bak Trading Sdn Bhd & Anor* [2002] 3 CLJ 357 CA and *Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad* [2010] 1 CLJ 444, 463 CA).

[17] The plaintiff's action in the High Court seeks, *inter alia*, the remedy of specific performance of the contract executed between the plaintiff and Petronas, and clearly comes within the purview of a civil action, under para. 3.1 of the PD which covers contracts which are further categorized in para. 3.1.3 thereof. The plaintiff's action should have been properly filed in the civil division.

[18] In addition, the PD provides particularly that any matter not listed under the commercial division ought to be filed in the civil division. In the PD, only the contract of agency was listed in para 3.2.6 under the commercial division. After para 3.2.12, there was a specific note prescribing that any dispute arising from the registration and distribution of any case must be referred to and resolved by the managing judge of the specific division. The plaintiff's action has been referred to and resolved by the managing judge, and that was completely consistent with the PD. The whole picture has been crystallized in the letter dated 19 January 2011 from the deputy registrar of the commercial division to the deputy registrar of the civil division. It states that the plaintiff's action has been referred to the managing judge of

A the commercial division for instruction, and the managing judge has duly directed it to be transferred to the civil division. We are of the view that it was effected exclusively to ensure that the matter be heard before the appropriate division of the same High Court. The plaintiff's affidavit in support of the re-transfer application did
B not aver anything which could be construed as being prejudicial to the plaintiff in the movement of the plaintiff's action to the civil division which, after all, is another division of the same High Court exercising co-ordinate jurisdiction in the same building in Kuala Lumpur.

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Conclusion

[19] On the foregoing grounds, we answered the aforesaid question in the affirmative. We found no merit in this appeal which we dismissed with costs in the cause. The deposit was
D refunded to the plaintiff-appellant.

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